

REMARKS

Claims 1-33 are currently pending, wherein claims 1, 13, 20, 30, and 31 have been amended. Favorable reconsideration is respectfully requested in view of the remarks presented herein below.

On page 2 of the Office action ("Action"), the Examiner rejects claims 1-4, 13-16, 20-23, and 31-33 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0088940 A1 to Toda et al. ("Toda"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. § 102, the cited reference must teach each and every claimed element. In the present case, claims 1-4, 13-16, 20-23, and 31-33 are patentable over Toda because Toda fails to disclose each and every claimed element. More specifically, Toda fails to disclose the characteristics of the optical system of the optical pickup includes at least one of a wavelength of a laser beam of the optical recording device and a numerical aperture of an objective lens of the optical recording device as claimed.

Although Toda appears to disclose a method of setting an initial recording/write condition/strategy based on control data read from the recording medium and modifying the initial recording condition based on the detected asymmetry which *arguendo* is affected by the characteristics of the optical information recording and reproducing apparatus, nowhere in Toda is there any disclosure of determining a write strategy and asymmetry value to be used in recording based on the recommended write strategy parameters, the recommended asymmetry value, and characteristics of the optical system of the optical pickup, wherein the characteristics of the optical system of the optical pickup includes at least one of a wavelength of a laser beam of the optical recording device and a numerical aperture of an objective lens of the optical

recording device as claimed. Reconsideration and withdrawal of the rejection of claims 1-4, 13-16, 20-23, and 31-33 under 35 U.S.C. § 102(e) is respectfully requested.

On page 5 of the Action, the Examiner rejects claims 10 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Toda in view of U.S. Patent Application Publication No. 2003/0048709 A1 to Van Woundenberg (“Van Woundenberg”). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. § 103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some rationale to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element.

Claims 10 and 28 depend from independent claims 1 and 20, respectively. Therefore, claims 10 and 28 are patentable over Toda for at least those reasons presented above with respect to claims 1 and 20. Van Woundenberg discloses an optical data storage medium and methods for reading and writing on such a medium. However, Van Woundenberg fails to overcome the deficiencies of Toda.

Since Toda and Van Woundenberg both fail to teach or suggest determining a write strategy and asymmetry value to be used in recording based on the recommended write strategy parameters, the recommended asymmetry value, and characteristics of the optical system of the optical pickup, wherein the characteristics of the optical system of the optical pickup includes at least one of a wavelength of a laser beam of the optical recording device and a numerical aperture of an objective lens of the optical recording device as claimed, the combination of these

two references cannot possibly disclose or suggest said feature. Therefore, even if one skilled in the art had some rationale to combine Toda and Van Woundenberg (which Applicants do not concede), the combination would still fail to render claims 10 and 28 unpatentable because the combination fails to disclose each and every claimed element. Reconsideration and withdrawal of the rejection of claims 10 and 28 under 35 U.S.C. § 103(a) is respectfully requested.

On page 6 of the Action, the Examiner rejects claims 11 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Toda in view of U.S. Patent Application Publication No. 2001/0014067 A1 to Iwata et al. ("Iwata"). Applicants respectfully traverse this rejection.

Claims 11 and 29 depend from independent claims 1 and 20, respectively. Therefore, claims 11 and 29 are patentable over Toda for at least those reasons presented above with respect to claims 1 and 20. Iwata discloses an optical disk apparatus. However, Iwata fails to overcome the deficiencies of Toda.

In rejecting claims 11 and 29, the Examiner asserts that Iwata discloses calculating an asymmetry value based on the recommended asymmetry value and the numerical aperture of the objective lens. This assertion is unfounded. Although Iwata discusses the relationship between the numerical aperture and the asymmetry value, for example, in ¶ [0091], nowhere in Iwata is there any disclosure or suggestion of calculating the asymmetry value *based* on the numerical aperture. To the contrary, Iwata merely discusses the effect a change in the numerical aperture has on the asymmetry value.

Since Toda and Iwata both fail to teach or suggest determining a write strategy and asymmetry value to be used in recording based on the recommended write strategy parameters, the recommended asymmetry value, and characteristics of the optical system of the optical

pickup, wherein the characteristics of the optical system of the optical pickup includes at least one of a wavelength of a laser beam of the optical recording device and a numerical aperture of an objective lens of the optical recording device as claimed, the combination of these two references cannot possibly disclose or suggest said feature. Therefore, even if one skilled in the art had some rationale to combine Toda and Iwata (which Applicants do not concede), the combination would still fail to render claims 11 and 29 unpatentable because the combination fails to disclose each and every claimed element. Reconsideration and withdrawal of the rejection of claims 11 and 29 under 35 U.S.C. § 103(a) is respectfully requested.

The application is in condition for allowance. Notice of same is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Penny Caudle Reg. No. 46,607 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

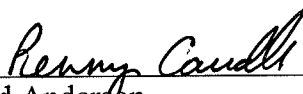
Application No. 10/541,628
Amendment dated March 25, 2010
Reply to Office Action of January 6, 2010

Docket No.: 1190-0609PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: March 25, 2010

Respectfully submitted,

By  #461607
D. Richard Anderson
Registration No.: 40,439
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000